

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK**

FRANK MADERA

Plaintiff,

-v.-

**Civil Action No.
9:00-cv-207 (GLS/RFT)**

**GARY H. FILION, Superintendent
of Marcy Corr. Facility**

Defendants.

APPEARANCES:

**FRANK MADERA
Plaintiff Pro Se
97-B-0807
Marcy Correctional Facility
Box 3600
Marcy, NY 13403-3600**

**ELIOT SPITZER, ESQ.
NEW YORK STATE ATTORNEY GENERAL
207 Genesee Street
Utica, NY 13501**

**G. LAWRENCE DILLON,
Esq.
Assistant Attorney General**

**GARY L. SHARPE,
U.S. DISTRICT JUDGE**

ORDER

The above-captioned matter comes to this court following a Report-Recommendation by Magistrate Judge Randolph F. Treece duly filed July 19, 2005. On February 3, 2000, Frank Madera filed a *pro se* petition for habeas corpus. See *Dkt. No. 1*. On March 7, 2000, the court issued an order granting petitioner's request to proceed with this action *in forma pauperis*. The order further stated, consistent with local practice in this district, warned Madera of his obligation to notify the court of any address change. See *L.R. 10.1(b)(2)*. Furthermore, he was warned that his failure to comply with this rule could result in the dismissal of his action. See *L.R. 41.2(b)*. More specifically, the court mailed him an order which provided, *inter alia*:

Petitioner is also required to promptly notify the Clerk's Office and counsel for the respondent of any change in his address; his failure to do same will result in dismissal of the action.

See *Order, Dkt. No. 3* (emphasis in the original).

On July 28, 2005, Madera's copy of the Report-Recommendation and Order was returned in its original envelope, and marked "Return to Sender" with hand written notations "2/11/05 paroled Clinton." See *Dkt. No. 15*. This court ascertained that Madera was paroled on February 11, 2005.

See N. Y. S. Department of Corrections website at

<http://nysdocslookup.docs.state.ny.us>. Local Rule 41.2(b) provides that the “failure to notify the court of a change of address in accordance with Local Rule 10.1(b) may result in dismissal.” Rule 41(b) of the Federal Rules of Civil Procedure allows a court to dismiss an action for failure to prosecute. Courts in the Northern District of New York have dismissed law suits brought by *pro se* plaintiffs for failure to provide a current address. See *Fenza v. Conklin*, 177 F.R.D. 126 (N.D.N.Y. 1988); *Williams v. Faulkner*, 95-CV-741, 1998 WL 278288 (N.D.N.Y. May 20, 1998); *Dansby v. Albany County Corr. Facility Staff*, 95-CV-1525, 1996 WL 172699 (N.D.N.Y. April 10, 1996).

Notwithstanding that Madera’s failure to provide this court with a change of address warrants dismissal. After careful review of all of the papers herein, including the Magistrate Judge’s Report-Recommendation, and no objections submitted thereto, it is hereby

ORDERED, that the Report-Recommendation of Magistrate Judge Randolph F. Treece filed July 19, 2005 is ACCEPTED in its entirety for the reasons stated therein, and it is further

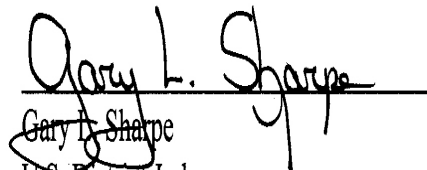
ORDERED, that the Petition for Writ of Habeas Corpus filed by Frank Madera is DENIED and DISMISSED as for the reasons stated within the Report-Recommendation and Order and for failure to notify

the court of his current address, for failure to prosecute, and for failure to comply with the court's March 7, 2000 order, and it is further

ORDERED, that the Clerk of the Court is to enter judgment in favor of Defendant and close this case.

IT IS SO ORDERED

Dated: August 29, 2005
Albany, New York


Gary L. Sharpe
U.S. District Judge